

Message Text

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ACTION L-03

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TAGS: ELAB, TH
SUBJ: ALIEN BUSINESS AND ALIEN OCCUPATION DECREES

REF: A. STATE 101998 B . BANGKOK 5712

1. SUMMARY: EMBOFFS MAY 30 CALLED ON MFA TO DISCUSS CONTENTS OF REF A AND RELATED MATTERS. SEVERAL ISSUES NOW RESOLVED, BUT MFA RAISED NEW PROBLEM CONCERNING RELATION BETWEEN AOD AND AER TREATY, NAMELY, POSSIBILITY US PERSONNEL OF US FIRMS COULD BE REFUSED ENTRY IN SPITE OF SECOND SENTENCE ARTICLE IV:6, TO EXTEND THEY INTEND ENGAGE IN PROHIBITED PROFESSIONS. NO PROGRESS MADE ON ISSUE OF " EFFECTIVE CONTINUOUS RESIDENCE" FOR US BUSINESS-MEN UNDER ARTICLE I: 1 AS SUBJECT WAS PRESENTED BY MFA LEGAL AND TREATY DEPT. AS MATTER OF " POLICY" , NOT LEGAL INTERPRETATION OF TREATY DEFINITION OF " CALLINGS" REMAINS UNDER REVIEW BY MFA. AMCHAM REPS TO MEET MFA AND OTHER RTA OFFICIALS JUNE 5 IN GENERAL DISCUSSION OF BUSINESS PROBLEMS RELATED TO ABD/ AOD. END SUMMARY.

2. EMBOFFS ON MAY 30 CALLED ON ARUN PANUPONG, DIRECTOR GENERAL OF LEGAL AND TREATY DEPARTMENT OF MFA TO DISCUSS CONTENTS REF. A AND RELATED MATTERS. WHILE RECEIVING U. S. VIEW OF VARIOUS ISSUES, HE INDICATED THIS POSITION HAD SHIFTED SLIGHTLY ON ONE POINT (PARA .7).

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EM REGARDING QUESTIONS RAISED PARA 3 REF B AND RELATED VIEWS OF DEPT CONTAINED REF A, FOLLOWING TOOK PLACE:
FOR POINTS (A) , (B) AND (C) , THERE APPEAR NOW TO BE NO DIFFERENCES BETWEEN US, WITH MFA TAKING NOTE OF U. S.

POINT REGARDING RELEVANCE ARTICLE III:2.

(D) WHILE U. S. AND THAI VIEWS AGREE THAT CONTROL OF 50/50 US/ THAI OR US/ THIRD COUNTRY OWNED FIRM DETERMINED BY ARTICLES OF INCORPORATION AND OTHER POINTS MENTIONED IN REF. A, MFA OFFICIAL POINTED OUT DECREE 281 DEFINES ANY FIRM WITH 50 PERCENT OR MORE (FOREIGN OWNERSHIP AS ALIEN. DS-47, SAID HE WOULD STUDY FURTHER THE ARGUMENT NOW MADE BY DEPT THAT FIRM WITH COMBINED US/ THAI OWNERSHIP OF 50 PERCENT OR MORE IS PROTECTED, SINCE THIS PROBLEM WAS REALLY BEYOND THE TREATY ITSELF. EMBOFFS WERE INVITED TO COME BACK TO THIS SUBJECT AT LATER MEETING.

4. DG ARUN ACCEPTED POINT MADE PARA 2 (E) OF REF. A AND "NOTED" POINT MADE IN PARA 2 (F). EMBOFFS BELIEVE HE WILL ACCEPT SUBSTANCE OF POINT AFTER STUDY.

5. ON ARTICLE I:1 ARUN ELABORATED FURTHER THAI VIEW THAT PHRASE " SUBJECT TO THE LAWS RELATING TO THE ENTRY AND SOJOURN OF ALIENS" IS THE MAIN POINT OF THE PARAGRAPH AND THIS LANGUAGE IS NOT WEAKENED OR LIMITED BY WHAT FOLLOWS, E. G., BY PERMISSION FOR NATIONALS OF OTHER PARTY TO RESIDE AND REMAIN FOR PURPOSES MENTIONED. HE NOTED PHRASE " AND IN PARTICULAR" WAS AN ELABORATION OF PERMISSION ALREADY MENTIONED, NOT AN ADDITION. HE ACKNOWLEDGED THAT U. S. BUSINESSMEN COULD BE HAMPERED BY IMMIGRATION AND LABOR LAWS, BUT PROBLEM HAD TO BE SOLVED ELSEWHERE AND AS A MATTER OF POLICY, NOT AS A MATTER OF RIGHT ARISING FROM INTERPRETATION OF TREATY. EMB-OFFS DID NOT ACCEPT THIS POINT BUT ARGUED INTENTION OF TREATY WOULD BE VIOLATED IF SUCH LAWS AND REGULATIONS IN EFFECT PAYMENT " EFFECTIVE CONTINUOUS RESIDENCE" FOR PURPOSES STATED ARTICLE I:1. IN RESPONSE TO EMBOFFS QUESTIONS, ARUN SAID BUSINESSMENS VISA PROCEDURE IS POLITICAL QUESTION OUTSIDE HIS COMPETENCE.

6. ARUN TOOK NOTE OF U. S. POSITION ON WORD " CALLINGS" IN

ARTICLE IV:3 AND SAID THAI SIDE STILL LOOKING INTO INTENTION OF DRAFTERS. WILL INFORM EMB LATER.

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7. ARUN THEN MENTIONED ARTICLE IV:6 SECOND SENTENCE, ON WHICH US/ THAI VIEWS SEEMED TO CORRESPOND, BUT SAID NEW ISSUE HAD BEEN RAISED WITHIN RTG WHICH WOULD REQUIRE FURTHER STUDY. HE THEN PRESENTED ARGUMENT THAT AOD COULD APPLY TO U. S. PERSONNEL BROUGHT TO THAILAND UNDER THIS SENTENCE SINCE THIS LAW NOT INCONSISTENT WITH " ENTRY AND SOJOURN" CLAUSE OF ARTICLE I:1 NOR WITH PHRASE IN FIRST SENTENCE OF ARTICLE IV:6 " IN ACCORDANCE WITH THE APPLICABLE LAWS". THUS, FOR EXAMPLE, A U. S. COMPANY COULD BE PREVENTED FROM BRINGING IN LAWYER, ACCOUNTANT OR ANY OTHER PERSON IN PROFESSION PROHIBITED BY AOD. SUCH PERSON WOULD NOT BE ABLE HAVE WORK PERMIT, THEREFORE WOULD NOT BE ABLE ENTER

THAILAND. HE FURTHER ARGUED THIS POSITION SEEMED BE SUPPORTED BY LANGUAGE IN US/ GREEK TREATY OF 1951. IN COMPARABLE PARAGRAPH, ARTICLE XII:4 OF THAT TREATY WORDS USED ARE " THOSE LEGALLY IN THE COUNTRY AND ELIGIBLE TO WORK". HE THOUGHT THESE WORDS SPELLED OUT REAL MEANING OF US/ THAI TREATY. EMBOFFS SAID THEIR INITIAL REACTION WAS THAT THAI VIEW WAS NOT RPT NOT CONSISTENT WITH LATTER TREATY AND AGREED ASK FOR INSTRUCTIONS.

8. ANOTHER MFA OFFICER PRESENT ASKED FOR U. S. VIEWS ON POSSIBLE INCONSISTENCY BETWEEN PARAS 3 AND 6 OF ARTICLE IV. IS THERE ANY RELATIONSHIP BETWEEN THEM?

9. EMBOFFS ONCE AGAIN ASKED WHAT SITUATION WOULD BE FOR THOSE FIRMS NOT REGISTERED IF TREATY TERMINATED IN 1978? ARUN SAID THIS WAS A POLICY MATTER OUTSIDE HIS COMP HENCE, ALTHOUGH HE RECOGNIZED THE PROBLEM.

10. IN CLOSING REMARKS, ARUN SAID THERE APPEARED BE NO SERIOUS PROBLEM IN RELATIONSHIP BETWEEN AER TREATY AND DECREE NO. 281, AS LATTER HAD SPECIFIC CLAUSE EXCEPTING APPLICATION OF ITS PROVISIONS IN CASE OF A TREATY (CLAUSE 2). PROBLEM WAS ONLY ONE OF TREATY INTERPRETATION AND CORRESPONDING IMPLEMENTATION OF DECREES. HOWEVER, SAID SAME WAS NOT TRUE IN CASE OF DECREE NO. 322, AOD, A POINT WHICH WORRIED HIM. EMBOFFS MENTIONED THEY HAD BEEN TOLD BY DG OF COMMERCIAL REGISTRATION DEPT. THAT DEPT WOULD ACCEPT DEFINITION OF U. S. FIRMS PROVIDED BY MFA AND MFA VIEW OF LIMITED OFFICIAL USE
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EXTEND OF PROTECTION OFFERED BY TREATY. ARUN SAID MFA HAD NOT YET NOTIFIED MINISTRY OF COMMERCE BUT WAS WORKING TO DEVELOP " NATIONAL POSITION" ON INTERPRETATION OF TREATY WHICH WOULD BE COMMUNICATED TO ALL MINISTRIES CONCERNED. FINALLY HE STRESSED THAT IN HIS VIEW SPIRIT OF TREATY WAS VERY IMPORTANT, CITING LANGUAGE ARTICLE XIII:1 AND THIS WAS MANNER IN WHICH HE APPROACHED OUR DISCUSSION. ADMONISHED EMBOFFS NOT TO WORRY AND SAID NO INTENTION MAKE THINGS DIFFICULT FOR U. S. EMBOFFS EXPRESSED APPRECIATION THESE REMARKS.

11. EMB REQUESTS DEPARTMENT' S VIEWS ON QUESTIONS RAISED PARA' S 7 AND 8 AND ANY FURTHER ARGUMENTATION WE MIGHT USE PARA 5.

12. DELEGATION OF ABOUT EIGHT MEMBERS OF AMCHAM ACCOMPANIED BY EMBOFFS, WILL MEET WITH OFFICERS OF MFA AND MINISTRY OF COMMERCE JUNE 5 IN RESPONSE TO INITIATIVE EXTENDED VIA AMB BY DEP. FOR. MINISTER CHARTCHAI. WILL REPORT RESULTS. IN PREPARATION FOR THIS MEETING THREE EMBOFFS MET IN EXTENDED SESSION WITH AMCHAM GROUP MAY 31.

MASTERS

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